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Before the  
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Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of )  
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Implementation of the )  
Pay Telephone Reclassification )  
and Compensation Provisions )  
of the )  
Telecommunications Act of 1996 )

CC Docket No. 96-128

DOCKET FILE COPY ORIGINAL

To: The Commission

PETITION FOR PARTIAL RECONSIDERATION  
of AIRTOUCH PAGING

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October 21, 1996

No. of Copies rec'd 0+11  
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## SUMMARY

AirTouch Paging hereby seeks reconsideration of the Commission's Report and Order implementing Section 276 of the Telecommunications Act of 1996.

AirTouch seeks reconsideration of the Commission's rejection of a caller pays, coin-deposit system of compensating PSPs in favor of a carrier pays system. In rejecting the caller pays approach, the Commission stated that such a system would be more burdensome for transient payphone callers, would involve greater transaction costs, and may violate a provision of the Communications Act that prohibits the adoption of compensation rules for interstate access code calls that require "advance payment by consumers". As AirTouch demonstrates herein, none of these bases withstands scrutiny.

AirTouch also seeks reconsideration of the Commission's establishment of a default PSP compensation rate of \$.35 per call, which is contrary to the creation of a competitive payphone market, and constitutes excessive compensation that pays PSPs for their customer premises equipment rather than the cost of the service they provide.

Finally, the Commission should mandate that PSPs provide a coin deposit mechanism that allows consumers to continue placing subscriber 800 calls even if IXCs block subscriber 800 calls at the 800 subscriber's request.

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To:       The Commission

**PETITION FOR PARTIAL RECONSIDERATION**

AirTouch Paging ("AirTouch"), by its attorneys and pursuant to Section 1.106 of the Commission's rules and paragraph 300 of the Report and Order in CC Docket No. 96-128, Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, FCC 96-388, released September 20, 1996 ("Payphone Compensation Order"), hereby respectfully seeks reconsideration of certain portions of the Commission's decision in the Payphone Compensation Order, as set forth more fully below. In support hereof, the following is respectfully shown:

**I. Background**

1.     The Payphone Compensation Order adopts rules implementing the pay telephone reclassification and

compensation provisions of the Telecommunications Act of 1996,<sup>1/</sup> which, inter alia, mandate that all payphone service providers ("PSPs") be "fairly compensated for each and every completed intrastate and interstate call using their payphone."<sup>2/</sup>

2. A critical component of the new rules is assigning responsibility for paying compensation to PSPs. In implementing Section 276(b)(1)(A) of the 1996 Act, the Commission adopted a "carrier pays" system whereby interexchange carriers ("IXCs") must track all calls placed from payphones and must reimburse every PSP the charge levied by PSPs for each call.<sup>3/</sup> In doing so, the Payphone Compensation Order rejected other possible solutions, including a "caller pays" mechanism supported by numerous commenters.<sup>4/</sup>

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<sup>1/</sup> Pub. L. No. 104-104, Section 101(a), 110 Stat. 56 (1996), codified at 47 U.S.C. § 276 (the "1996 Act").

<sup>2/</sup> 47 U.S.C. § 276(b)(1)(A).

<sup>3/</sup> See Payphone Compensation Order, paras. 17, 97; 47 C.F.R. § 64.1300.

<sup>4/</sup> See Comments of AirTouch Paging, Arch Communications Group, Inc., Excel Telecommunications, Inc., Frontier Corporation, Personal Communications Industry Association, Paging Network, Inc., Scherers Communications Group, Inc., WorldCom, Inc.; Reply Comments of Mobilemedia Communications, Inc.

3. In addition, under color of authority of the 1996 Act's requirement that PSPs be "fairly compensated", the Commission established for an interim period a rate of \$.35 per call in the absence of an agreement between the IXC and PSP.<sup>5/</sup> Thereafter, PSPs will be compensated at the market-based local coin rate in the absence of a negotiated rate.<sup>6/</sup>

4. The Commission is to be commended for effectuating, under severe time constraints imposed by Congress, a new deregulatory and pro-competitive environment for the public pay telephone market that generally is consistent with the intent of the 1996 Act. Nonetheless, the Commission's need to put final rules in place quickly should not compel the adoption of rules that are unworkable, detrimental to the public interest and competitive industries, and are contrary to law, Congressional intent, and the record of this proceeding. Consequently, AirTouch urges the Commission to reconsider both its adoption of a carrier pays compensation scheme for calls to 800 number subscribers placed from payphones and its setting of compensation rates.

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5/ Payphone Compensation Order, paras. 50-51, 71, 125; 47 C.F.R. § 64.1300(d).

6/ Id., paras. 51, 70-71; 47 C.F.R. § 64.1300(c).

**II. The Commission Did Not Adequately  
Explain Its Basis for  
Rejecting a Caller Pays System**

5. In rejecting a caller pays, coin-deposit system of compensating PSPs, the Commission stated that such a system (1) would be more burdensome for "transient payphone callers", (2) would involve greater transaction costs, and (3) may violate a provision of the Communications Act that prohibits the adoption of compensation rules for interstate access code calls that require "advance payment by consumers".<sup>7/</sup> None of these bases withstands scrutiny.

6. There is virtually nothing in the record of this proceeding demonstrating that a caller pays system would be burdensome for "transient payphone callers"<sup>8/</sup> or for consumers generally.<sup>9/</sup> By adopting rules that provide

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<sup>7/</sup> Id., para. 85.

<sup>8/</sup> The Commission offers no explanation of this term. As AirTouch understands it, public and semi-public payphones generally are for persons not living in the immediate vicinity of the payphone, and thus all payphone users can be considered "transient" to some extent.

<sup>9/</sup> The Commission simply cited without analysis the Comments of several parties who opposed a caller pays system. See Payphone Compensation Order at para. 80 and nn. 284, 285. Those commenters, however, did little more than state that consumers should not be excessively burdened, without explaining how a caller pays system would add to existing burdens. See Comments of Ameritech at 8; Florida Public Service  
(continued...)

that a market-based coin rate ultimately will become the per-call compensation rate for all PSPs,<sup>10/</sup> the Commission has accepted that the prevalence of coin deposit telephones is a market condition that is unlikely to change.<sup>11/</sup>

Clearly, most consumers are neither surprised nor burdened by coin telephones. Nonetheless, despite the current and future prevalence of coin payphones, the Commission has determined that compensating PSPs through a coin deposit mechanism is burdensome. The Commission must recognize that either a "coin in the box" or called party pays approach results in someone paying more for the same call. The coin deposit approach appropriately allows the calling party to pay the PSP.<sup>12/</sup>

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9/ (...continued)

Commission at 4; State of New York Department of Public Service at 7; State of Oklahoma at 2; Telecommunications Resellers Association at 23; Public Utilities Commission of Texas at 3; Virginia State Corporation Commission at 3, all filed July 1, 1996.

10/ Payphone Compensation Order, paras. 51, 70-71.

11/ According to the Commission, there currently are approximately 1,850,000 payphones. Payphone Compensation Order, para. 9. The Commission does not state how many of these are coin payphones.

12/ AirTouch's concern that the Commission's plan compensates PSPs for CPE, set forth below, also would be resolved by a caller pays approach. The calling party, not the called party, should pay for the use of CPE.



7. Similarly, nothing in the record supports the Commission's conclusion that a caller pays system results in greater transaction costs than a carrier pays system for 800 subscriber calls.<sup>13/</sup> Indeed, a fair reading of the record leads to the opposite conclusion. The record is clear, and the Commission concedes, that IXCs presently do not, and may be unable to, track 800 subscriber calls,<sup>14/</sup> which comprise two-thirds of all compensable payphone calls.<sup>15/</sup> By requiring IXCs to implement tracking systems, and then to reimburse PSPs for charges set by the PSPs, the Commission has added unnecessary complexity and increased costs.<sup>16/</sup>

8. As noted in the Comments of AirTouch and others,<sup>17/</sup> a carrier pays system will impose substantial

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<sup>13/</sup> AirTouch believes that any mechanism other than a coin in the box will increase network costs to the IXC, paging providers, and ultimately the subscriber.

<sup>14/</sup> Payphone Compensation Order, paras. 5, 99.

<sup>15/</sup> Id. n.427.

<sup>16/</sup> At least one IXC has stated that the Commission's plan will "cost[] more to implement than is received" by PSPs. See Communications Daily, October 10, 1996, p.2.

<sup>17/</sup> See Comments of Paging Network, Inc., Arch Communications Group, Inc., and Personal Communications Industry Association, filed July 1, 1996; Reply Comments of MobileMedia, filed July 15, 1996.

costs and burdens on the paging industry.<sup>18/</sup> The 800 number charge component currently is approximately 10% of the cost of AirTouch's nationwide paging service. Under the Commission's compensation scheme -- and assuming the IXC chooses not to block such calls -- the IXC will pass on the rate it pays to the PSP directly to 800 number subscribers such as AirTouch, either on a per-call basis, or in the form of higher per-minute rates. AirTouch, however, cannot pass costs along on a per-call basis, because it has no way to track and bill for individual 800 calls. AirTouch thus will have little choice but to pass the rate along to its customers in the form of overall higher rates for service. AirTouch believes that the carrier pays system will result in the cost of 800 number service more than doubling, from approximately \$30 to \$60 per month.<sup>19/</sup>

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18/ AirTouch and other paging companies use 800 numbers (and other toll-free numbers) in the provision of Commercial Mobile Radio Service ("CMRS"), paging, and messaging services. AirTouch uses 800 numbers both as an end-user subscriber for business calls and also resells 800 numbers as part of its CMRS offerings to originate pages and voice mail and to retrieve voice mail. Such 800 numbers may be either a single 800 number requiring the subscriber to enter a Personal Identification Number, or a personal 800 number assigned only to that subscriber.

19/ Additional problems are posed by the fact that the Commission has not required PSPs, LECs, and IXCs to develop an accounting system that guarantees prompt rendering of billing statements and payments. If an  
(continued...)

9. The Commission has previously determined that the paging industry is highly competitive and price driven.<sup>20/</sup> There is a substantial danger that the costs imposed by the Payphone Compensation Order will harm the public interest by severely limiting the demand for this service and rendering the industry less competitive.

10. The Commission's third basis for rejecting a caller pays system is that it "would contradict the congressional intent, and possibly the plain language",<sup>21/</sup> of Section 226(e)(2) of the Communications Act of 1934, as amended (the "Act"), language which the Commission interprets to prohibit coin deposit as a mechanism for compensating owners of competitive pay telephones for calls routed to certain providers of operator services.<sup>22/</sup> But the plain language of the Act defines "provider of operator

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<sup>19/</sup> (...continued)

IXC does not pass its PSP compensation costs along to AirTouch immediately, AirTouch may not be able to recover them at all. Some states prohibit the passing through of charges more than 60-90 days old. It is conceivable that the pass-through PSP charges could be delayed longer than this time period.

<sup>20/</sup> Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems, WT Docket No. 96-18, Notice of Proposed Rulemaking, 11 FCC Rcd 3108 (1996).

<sup>21/</sup> Payphone Compensation Order, para. 85.

<sup>22/</sup> 47 U.S.C. § 226(e)(2).

services" in a manner that excludes CMRS providers that are subscribers and resellers of 800 numbers, including paging licensees.<sup>23/</sup> Thus, as AirTouch noted in its Comments in this proceeding, there is no statutory prohibition on a caller pays system for all 800 subscriber calls. In the Payphone Compensation Order the Commission failed to address the relevant language of the Act in concluding that there could "possibly" be a violation of Section 226(e). This summary legal analysis does not satisfy the Commission's obligation to engage in reasoned decisionmaking.

11. Finally, the Commission's conclusion that IXCs are the "primary economic beneficiary" of payphone calls and therefore should be responsible for compensating PSPs, is arbitrary and singularly lacking in support from the record of this proceeding.<sup>24/</sup> To the extent that any party can be said to be the "primary" beneficiary of payphone calls, it must be either the PSP -- who now has a statutory right to compensation -- or the calling party who seeks to initiate a call. Indeed, the Commission concedes that costs will be passed down the line,<sup>25/</sup> and thus that ultimately the called party will pay the cost of payphone calls. This result

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<sup>23/</sup> See 47 U.S.C. § 226(a)(9).

<sup>24/</sup> See Payphone Compensation Order, para 83.

<sup>25/</sup> See id., para. 17.

plainly can not be reconciled with the Commission's determination that it has assigned the responsibility for paying compensation to PSPs to the "primary economic beneficiary" of payphone calls.

12. In sum, the Commission's conclusion that a carrier pays system "places the payment obligation on the primary economic beneficiary in the least burdensome, most cost effective manner,"<sup>26/</sup> lacks support in the record, which shows that a carrier pays system imposes burdens on and increases costs for IXC's, resellers (such as paging providers) of 800 number subscribers, who may have their calls blocked, and consumers and 800 number subscribers, who may be unable to place 800 calls and whose costs for 800 service would increase dramatically under the Commission's new rules. According to the Commission's Regulatory Flexibility Act Analysis in this proceeding, there are nearly 7 million 800 number subscribers and thousands of wireless carriers who may be resellers and providers of 800 number service,<sup>27/</sup> all of whom will be adversely affected by the carrier pays system adopted in the Payphone Compensation Order. AirTouch believes the record plainly illustrates

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<sup>26/</sup> Id., para. 83.

<sup>27/</sup> Id., paras. 325, 327-333.

that a carrier pays system is not the least burdensome and most cost effective manner of compensating PSPs.

### **III. The Commission-Established Compensation Rate Is Excessive**

13. As noted, the Commission generally has established a default PSP compensation rate of \$.35 per call until such time as the local coin market rate compensation rate becomes effective. This rate is contrary to the creation of a competitive payphone market and constitutes excessive compensation that is not based on the cost of the service provided by the PSP.<sup>28/</sup>

#### **A. A Caller Pays System Will Allow the Market to Establish Competitive Payphone Charges**

14. The Commission has determined that fair compensation for PSPs is the local market-based coin rate.<sup>29/</sup> However, the carrier pays system adopted in the Payphone Compensation Order does not allow market forces to establish rates and decreases incentives for PSPs to set competitive rates. In contrast, a caller pays, market-based

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<sup>28/</sup> The Commission-established rate may in fact constitute an unlawful taking. The compensation rate could result in the complete elimination of all revenues for the services for which 800 subscriber numbers are offered.

<sup>29/</sup> Payphone Compensation Order, para. 70. This rate, however, is meant to compensate both for the CPE and the telephone line charges. Here, the PSPs should not be compensated for CPE.

system will further the 1996 Act's goal of "promoting competition among" PSPs<sup>30/</sup> because PSPs would compete for payphone users by establishing competitive rates. Each PSP should be required to establish its own rate for each of its payphones, and should post information at their payphones regarding the rate and how it will be collected. The consumer would immediately benefit by having a choice of competitive providers. Under the Commission's plan, PSPs have no incentive to begin offering competitive rates or to negotiate rates with IXCs.

15. The \$.35 per call compensation rate also is grossly excessive when viewed in light of the Commission's determination that LECs are entitled to receive \$.002-\$.004 per minute for unbundled local switching and transport and termination.<sup>31/</sup> There is no justification for such disparate rates. Should the Commission not reconsider its rejection of a caller pays compensation mechanism, AirTouch requests that the Commission conduct a thorough reexamination of its costing model for PSP compensation and

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30/ 47 U.S.C. § 276(b)(1).

31/ Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, First Report and Order, FCC 96-325, released August 8, 1996, paras. 810-811, 1060.

adopt a plan that compensates PSPs for the actual service provided.<sup>32/</sup>

**B. PSPs Must Be Compensated for the Service They Provide, Not for Their CPE**

16. The Commission's carrier pays scheme is contrary to longstanding precedent that customer premises equipment ("CPE") is a severable commodity from the provision of transmission services and the regulation of CPE under Title II [of the Act] is not required....<sup>33/</sup> Although the Payphone Compensation Order specifically finds that LEC-owned payphones are CPE subject to the Commission's CPE detariffing decisions,<sup>34/</sup> the plan adopted by the Commission compensates PSPs for the use of their equipment rather than for the service provided.

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<sup>32/</sup> As shown, AirTouch's monthly charges for paging service average about \$30. PSP compensation costs, assuming they are passed along by the IXC to AirTouch, are so high as to result in a confiscation of all paging revenues, unless AirTouch substantially raises its charges.

<sup>33/</sup> Amendment of Section 64.702 of the Commission's Rules and Regulations (Second Computer Inquiry), 77 FCC 2d 384, 388 (1980), reconsideration, 84 FCC 2d 50 (1980), further reconsideration, 88 FCC 2d 512 (1981), aff'd sub nom. Computer and Communications Industry Ass'n v. FCC, 693 F.2d 198 (D.C. Cir. 1982), cert. denied sub nom. Louisiana Public Serv. Comm'n v. FCC, 103 S.Ct. 2109 (1983).

<sup>34/</sup> Payphone Compensation Order, para. 142. Independent payphones already were treated as CPE prior to this decision. See id., para. 143.



17. The 1996 Act requires that PSPs be compensated "for each and every completed intrastate and interstate call...." Thus, Congress has determined that PSPs should be compensated for the services they provide -- direct LEC or IXC access -- and not for CPE. The plan adopted by the Commission instead compensates PSPs for their CPE. This is inconsistent with the Commission's determination elsewhere that rates for the transport of traffic should be supported by a cost-based standard.<sup>35/</sup>

**IV. The Ability of Consumers to Place  
Subscriber 800 Calls Must Not Be Restricted**

18. The Payphone Compensation Order states that IXCs have the option of blocking subscriber 800 calls from payphones, if they want to avoid paying the per-call payphone compensation charge.<sup>36/</sup> Because, as the Commission concedes,<sup>37/</sup> IXCs do not have in place a mechanism for tracking subscriber 800 calls from payphones, until such a mechanism is developed IXCs have little incentive not to

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<sup>35/</sup> Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, First Report and Order, FCC 96-325, released August 8, 1996, para. 1054.

<sup>36/</sup> Payphone Compensation Order, para. 17. It is presumed that such blocking could be performed only at the request of the 800 subscriber.

<sup>37/</sup> Id., para. 17.

block such calls. Without more, the result would be devastating for consumers, who rely heavily on 800 numbers on a daily basis. Similarly, PSPs would suffer, because consumers would stop using payphones to dial 800 numbers. The logical result could be reduced payphone usage and therefore a reduction in payphones. It is inconceivable that this would be in the public interest.

19. As the Commission notes, two-thirds of payphone calls involve 800 numbers. The Commission should not allow such calls to be blocked except with the consent of the 800 number subscriber.<sup>38/</sup> In any event, the Commission should mandate that PSPs provide a competitive coin deposit mechanism that allows consumers to continue placing subscriber 800 calls. Persons who call 800 subscribers who do not want to pay for telephone usage thus still will be able to reach those 800 subscribers, resulting in fewer blocked calls. PSPs would retain the monies deposited,

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<sup>38/</sup> According to the Commission, TOCSIA does not prohibit an IXC from blocking subscriber 800 numbers from payphones, and "[t]his uneven bargaining between parties necessitates the Commission's involvement." Payphone Compensation Order, para. 49. AirTouch agrees that the Commission should take action to prevent such blocking. Furthermore, the Commission should act immediately to declare unlawful the practice employed by some PSPs of deprogramming the touchtone pad if a calling party does not use the prescribed long distance provider or operator service. The PSP should be required to leave the touchtone keypad line open even if calls are placed to 800 subscribers.

thereby satisfying the compensation requirement of Section 276 of the Telecommunications Act of 1996 and furthering the Commission's universal service policies.

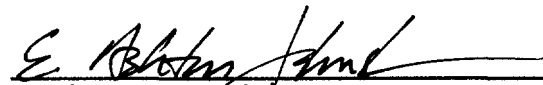
**V. Conclusion**

WHEREFORE, the foregoing premises duly considered, AirTouch Paging requests that the Commission grant reconsideration of the Report and Order in CC Docket No. 96-128 consistent with the foregoing.

Respectfully submitted,

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October 21, 1996

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**CERTIFICATE OF SERVICE**

I, Nadine Smith-Garrett, a secretary at the law firm of Paul, Hastings, Janofsky & Walker LLP, hereby certify that I have on this 21st day of October, 1996, caused a true and correct copy of the foregoing "Petition for Partial Reconsideration" of AirTouch Paging to be sent by hand delivery, to the following:

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